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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/458,179 11/19/99 BURKE

E DWE/BURKE#1

EXAMINER

PM92/0409

D W EGGINS  
129 DAPHNE CRESCENT  
BARRIE ON L4M 2Y7  
CANADA

AIR MAIL

GREEN, R  
ART UNIT PAPER NUMBER

3628  
DATE MAILED:

04/09/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

## Office Action Summary

Application No.

09/458,179

Applicant(s)

Examiner

Group Art Unit

3628

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

- ☒ Responsive to communication(s) filed on 11/19/99
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- ☒ Claim(s) 1-16 is/are pending in the application.
- Of the above claim(s) 2-5, 11, 16 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1, 6-10, 12-15 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_.

### Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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## **DETAILED ACTION**

### ***Election/Restriction***

1. This application contains claims directed to the following patentably distinct species of the claimed invention: species I. Figures 1-3;  
species II. Figures 4 and 5.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CAR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the

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examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Douglas W. Eggins on March 22, 2001 a provisional election was made with traverse to prosecute the invention of figures 1-3, claims 1,6-10, and 12-15. Affirmation of this election must be made by applicant in replying to this Office action. Claims 2-5,11, and 16 have been withdrawn from further consideration by the examiner, 37 CAR 1.142(b), as being drawn to a non-elected invention.

#### ***Drawings***

3. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

4. The drawings are objected to because in figures 1 and 2 the separated parts in each of these figures should be embraced with a bracket. Correction is required.

5. The drawings are objected to under 37 CAR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the plastic container defined in claim 14 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

#### ***Claim Rejections - 35 U.S.C. § 112***

6. Claims 1,6-10, and 12-15 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

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The specification fails to disclose how the bottom rim (26) is secured to the frame (12).

Claims 10 and 12-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 is indefinite since it is not clear what shape is being positively claimed since cups come in an almost endless variety of shapes and sizes. In claim 12, line 1, stating that the mast is cantilevered is inaccurate since the mast has structure attached to the bottom and top of it. In claim 13, line 1 is indefinite since the applicant uses the word consisting but fails to define all the elements that the base structure comprises, i.e. foot pad, positioning spring, closure bracket, etc. In claim 13, line 2, it is not clear whether the paving slabs are part of the portable base defined in claim 12 or additional elements and whether the applicant is positively claiming the paving slabs. In claim 15, line 1, there is no antecedent basis for "said base structure framework". In claim 15, lines 4-5 are indefinite since it is not clear whether the applicant is positively claiming the slabs in combination with the emblem and mast.

***Claim Rejections - 35 U.S.C. § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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8. Claims 1,9, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Perutz et al. (U.S. Patent No. 4,700,498).

Perutz et al. teaches the use of an emblem having a tensioned surface (11), first mounting attachment means (20,Y), second mounting attachment means (18,X), and tensioning means (22,23,24). In regard to claim 9, the emblem is considered to be three-dimensional since it has a height, width, and thickness. In regard to claim 12, the "cantilevered" support mast is considered to be element (25). The element (25) is considered to be cantilevered as much as the applicant's mast is. The base is considered to include elements (29a,29b) which are considered to be "separable".

***Claim Rejections - 35 U.S.C. § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perutz et al. (U.S. Patent No. 4,700,498).

Perutz et. al. discloses the idea of making the surface (11) of the emblem out of sheets of natural or suitable synthetic, lightweight, durable and non-shrinkable material, see column 2, lines 30-35. Perutz et al. does not disclose making the surface from a cloth knitted fabric made from polypropylene. The use of knitted cloth fabrics made from polypropylene are known in the art.

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It would have been obvious to one in the art to modify Perutz et al. by making the surface of the emblem from a knitted cloth fabric made from polypropylene since this would create a more durable and longer lasting display surface.

Claims 10 and 13-15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, first paragraph and 2<sup>nd</sup> paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Noffsinger, Hade, Ghany et al., Cochrane, May, Belgian, and Switzerland teach the use of tensioned signs. Cahn et al. and Fitzgerald et al. teach the use of bases for supporting a device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K. Green whose telephone number is (703) 308-1011.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

  
**BRIAN K. GREEN**  
**PRIMARY EXAMINER**

Bkg

April 5, 2001